

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**MAY 21 2001**

**PATRICK FISHER**  
Clerk

LEE DAVID HUMPHREY,

Petitioner - Appellant,  
vs.

MARK MCKINNA, Warden of  
Crowley County Correctional Facility,  
and ATTORNEY GENERAL OF THE  
STATE OF WYOMING,

Respondents - Appellees.

No. 00-8041  
(D.C. No. 00-CV-62-J)  
(D. Wyo.)

**ORDER AND JUDGMENT\***

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.\*\*

Mr. Humphrey, appearing pro se, seeks to appeal the district court's order denying his petition for a writ of habeas corpus. Mr. Humphrey is a Wyoming state prisoner. He argues that his detention in a private correctional facility in Colorado entitles him to habeas corpus relief. We have jurisdiction under 28

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

U.S.C. § 2253, and construe Mr. Humphrey's petition as brought under 28 U.S.C. § 2241. In light of our decision in Montez v. McKinna, 208 F.3d 862 (10th Cir. 2000) (no federal constitutional right to incarceration in any particular prison, private or public), we DENY Mr. Humphrey's application for a certificate of appealability and DISMISS the appeal. See id. at 865-66. Mr. Humphrey's attempt to distinguish Montez as premised upon a transfer pursuant to the Western Interstate Corrections Compact is neither accurate nor persuasive.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge